IN THE HIGH COURT OF JUDICATURE AT BOMBAY

WRIT PETITIONNO. 1317 OF 2003
ALONGWITH
CHAMBER SUMMONS NO. 122 OF 2003

Date of Judgment : 5th October, 2005

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copyof the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1317 OF 2003
ALONGWITH
CHAMBER SUMMONS NO. 122 OF 2003

1. THE BOMBAY CO-OPERATIVE INDUSTRIAL ESTATE LTD., A SOCIETY REGISTERED UNDER THE MAHARASTRA CO-OPERATIVE SOCIETIES ACT,1960 AND HAVING ITS REGISTERED OFFICE AT SAHAKAR BHAVAN, KURLA INDUSTRIAL ESTATE, AGRA ROAD, GHATKOPAR (W), BOMBAY - 400 086.

2. L.T.ADVANI OF BOMBAY, INDIAN INHABITANT, HAVING HIS OFFICE AT SAHAKAR BHAVAN, KURLA INDUSTRIAL ESTATE, AGRA ROAD, GHATKOPAR (W),BOMBAY 400086 .... PETITIONERS.

VERSUS

1. THE STATE OF MAHARASHTRA THROUGH GOVT. PLEADER, HIGH COURT,ORIGINAL SIDE,

2. COLLECTOR OF BOMBAY SUBURBAN DISTRICT, HAVING HIS OFFICE AT BMRD BUILDING, 2ND FLOOR, BANDRA(E),BOMBAY - 51.

3. ADDITIONAL COMMISSIONER, KONKAN DIVISION, MUMBAI, OLD SECRETRIATE BUILDING, 1ST FLOOR, M.G.ROAD, BOMBAY.

4. THE MINISTER FOR REVENUE, GOVERNMENT OF MAHARASHTRA, MANTRALAYA, MUMBAI - 32. .... RESPONDENTS.

MR. C.J.SAWANT ALONGWITH P.P. CHAVAN I/B. LITTLE AND COMPANY FOR THE pETITIONERS.
MR. N.A.PANDIT, AGP FOR THE STATE.

CORAM : S.K.SHAH, J.
DATE : October 5, 2005.

JUDGMENT

1. Heard.

2. By this Petition, the Petitioner - Society challenges the Order passed by the Respondent No.4, dated 28th April, 2003 passed in Revision Application No. LDN 2697/8681/C.R.7079/J-3.

3. The First Petitioner is the Co-operative Society. The Respondents had granted to the First Petitioner, 10 acres and 8 gunthas of land out of SS No. 1, Kurla-Kirol at Kurla for establishing the Industrial Estate for Small Scale Industries on payment of occupancy price at the rate of Rs.4.50 per Square Yards, subject to certain conditions. Accordingly, the agreement was executed. The First Petitioner was to construct bulding and structures on the said plot of land for the use of Industrial Purpose. Accordingly, the First Petitioner constructed 32 factory buildings/sheds on the said plot of land and allotted the same with the land appurtenant thereto to different Small Scale Industries, who were the Members of the Co-operative Society.

4. On 23.3.1994, the First Petitioner - Society received a show cause notice from respondent NO.2, the Collector. In all there were four alleged violations. We are concerned with two only. It was mentioned thereink that the society had violated conditions of the agreement, namely, Violation by one of its Members of the Society, Mr. P.T. Gadre who sold the plot No. 11-A to one Dalbir Singh and the another violation was that the Society had given office premises to Bank, Employment Exchange and Charitable Hospital, in one of the buildings constructed on the said land. The Petitioner Society replied those letters and given explanation as regards the alleged violations. The Respondent No. 2, however, exonerated the Society in respect of two violations while holding that the Society had violated Condition No. 2(c) in respect of Sale of Plot No. 11-A by its Member Mr. Gadre without prior permission. The Respondent NO. 2 also held that the Petitioner society had violated the Condition by giving part of the building to Bank, Employment Exchange Office and Charitable Hospital, without prior permission. The Respondent No.2, therefore, imposed penalty of Rs. 3,69,269/-, which is Ten times N.A assessment, for violation of the condition No.2 of the agreement.

5. The Petitioner Society challenged that

Order, by way of Writ Petition No. 1724 of 1995, wherein this Court directed the Petitioner Society to approach the Commissioner, who was the alternate remedy available with the Petitioner Society. As such the Appeal was filed before the Additional Commissioner, Konkan Division, Mumbai.

6. The Additional Commissioner, by his Order confirmed the findings of the Respondent NO.2 Collector that the Petitioner Society has violated the Conditions in respect of the two aforesaid transactions, however, the Additional Commissioner, reduced the Penalty of ten times N.A. Assessment to one time of N.A. Assessment.

7. The said Order of the Additional Commissioner was challenged by the Petitioners before the Respondent No.1, by way of Revision -The Respondent No .4 - Minister for Revenue, having confirmed the findings of the violation, modified the Order of penalty imposed by the Additional Commissioner - Respondent No.3 and directed the Petitioner Society to submit all the information regarding transferring of Share from Mr. Gadre to Mr. Dalbir Singh, the instrument of Transfer, like agreement to sell, conveyance or Indenture, to work out unearned income and also directed to furnish all information about renting out or sale of

premises to Bank, Canteen, Hospital etc. The Respondent NO.1 further directed the Collector to calculate and recover 50% of unearned income on above sale value and rent recovered so far and regularize the transactions. He further directed that if the Society continues the tenancy of the bank, canteen, hospital, then it requires to pay 50% of unearned income of the rent received, yearly.

8. It is this Order passed by the Respondent No.1 is impugned in this Writ Petition.

9. The learned Counsel for the Petitioner submits that the Respondent No.1 in exercise of the Revisional Jurisdiction under Section 257 of the Maharashtra Land Revenue Code, has exceeded the jurisdiction. He further submits that the Revision was filed by the Petitioner Society, mainly, challenging the penalty and in such a Petition, the Respondent No.1 could not have altered the Order of Penalty imposed by the Additional Commissioner. He also submits that no reasons are assigned for this Order of modification of the Penalty.

10. The learned Counsel for the Petitioner also submits that what Mr. Gadre transferred was only the Share Certificate and not the plot of land, as

held by the Authorities below as also by the Respondent No.1. However, this submission is not acceptable, as after construction of the buidling/sheds by the Petitioner-Society, what was given to its members, was not only the shed or building but also the plot of land appurtenant thereto.

11. The learned Counsel for the Petitioner also submits that a Sanad was issued as required under Section 133 of the Land Revenue Code which authorised transfer of the plot, so allotted. However, Sanad prescribes in general. There is nothing indicated that this Sanad was issued in favour of the Society. It is undisputed that the plot of the land was allotted to the Petitioner Society on specific terms and conditions. The condition No.2 specifically prescribes that transfer could be with the prior permission and it is this condition, which is violated. Therefore, I do not find any merit in this submission also.

12. Plain reading of Provisions of Section 257 of the Maharashtra Land Revenue Code would make it clear that as per Sub Section (3) of Section 257, the Respondent No.1 could modify, annul or reverse the Order, challenged in Revision before him OR the Respondent No.1 may pass such Orders as it deems

fit. These powers of revision were quite wide enough, which included the modification of the Order. Therefore, I am not inclined to accept the submission made on behalf of the Petitioner that the Respondent No.1 could not have modified the Order passed by the Additional Commissioner, which was challenged before him in a Revision.

13. What is pertinent to be noted is that while considering the legality or propriety of the Additional Commissioners Order in Revisional Jurisdiction under Section 257 of the said Act, the Respondent NO.1 could have given proper reasons why it found the Order passed by the Authorities below improper or otherwise and why it was necessary to modify the same.

14. A perusal of the Order passed by the Respondent No.1, which is impugned in this Petition, would indicate that there is no discussion as to why the penalty imposed by the Authorities below and particularly, the Respondent No.3, the Additional Commissioner, was insufficient one or improper one.

15. The learned Counsel for the Respondents drew my attention to the reasons given by the Respondent No.1, whereby the impugned order came to

be passed. This apart, what was required to be considered by the Respondent No.1 was the need for modification of the Order passed by the Respondent No.3, - Additional Commissioner, which reduced the penalty imposed by the Collector from 10 times N.A. assessment to that of one time N.A. Assessment. This exactly has not been done. When the Respondent No.3 found the penalty of one time N.A. Assessment to be sufficient, the Respondent No.1 ought to have given reasons as to why it was not proper and need to modify the Order, however, nothing of the sort has been done. It is for these reason that the impugned Order shall have to be set aside while maintaining the other part of the Order. Hence, the Order :-

ORDER

1) The Writ Petition is partly allowed.

2) The Order passed by the Respondent No.1 is hereby set side and Order passed by the Additional Commissioner in Appeal No. APPEAL DESK-LND-50/1995, is hereby restored.

3) The Writ Petition stands disposed of

accordingly.

4) Chamber Summons No. 122 of 2003 shall stand disposed of with no Orders thereon.

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[S.K.SHAH, J.]